



**6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 194**

**[EPA-HQ-OAR-2013-0684; FRL-9917-57-OAR]**

**RIN 2060-AR60**

### **Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's**

### **Compliance with the Disposal Regulations; Panel Closure Redesign**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** With this document, the U.S. Environmental Protection Agency (EPA, or the Agency) approves the U.S. Department of Energy's (DOE, or the Department) planned change request to implement the Run-of-Mine Panel Closure System (ROMPCS) at the Waste Isolation Pilot Plant (WIPP) and amends the WIPP Compliance Criteria to allow an EPA-approved panel closure other than the currently-required Option D design. Technical analyses demonstrate that, with the modified panel closure design, WIPP remains in compliance with the 10,000 year release limits set by the "Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic (TRU) Radioactive Waste." The changes do not lessen the requirements for complying with the Compliance Criteria, nor do these changes impact the technical approach that the EPA will employ when considering any future planned changes to the panel closure system. Compliance with environmental or public health regulations other than the EPA's long-term radioactive waste disposal regulations and WIPP Compliance Criteria is not addressed by today's action.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** *Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. The EPA has established a docket for this action under Docket ID No. [EPA-HQ-OAR-2013-0684; FRL-9917-57-OAR]. Publicly available docket materials related to this action (e.g., the Technical Support document [TSD]) are available either electronically through [www.regulations.gov](http://www.regulations.gov), on the Agency's WIPP website (<http://www.epa.gov/radiation/wipp>) or in hard copy at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20004. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air and Radiation Docket is (202) 566-1742. In accordance with the EPA's regulations at 40 CFR part 2 and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Ray Lee or Jonathan Walsh, Radiation Protection Division, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC, 20460; telephone number: 202-343-9463 or 202-343-9238; fax number: 202-343-2305; e-mail address: [lee.raymond@epa.gov](mailto:lee.raymond@epa.gov) or [walsh.jonathan@epa.gov](mailto:walsh.jonathan@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Preamble Acronyms and Abbreviations**

Several acronyms and terms used to describe components of the WIPP disposal system and performance assessment computer models are included in this preamble. To ease the reading of this preamble and for reference purposes, the following terms are defined here:

BRAGFLO Computer model used to simulate brine and gas flow

CBFO Carlsbad Field Office

CCA Compliance Certification Application

CCDF Complementary Cumulative Distribution Function

CFR Code of Federal Regulations

DBR Direct Brine Release

DOE U.S. Department of Energy

DRZ Disturbed Rock Zone

EPA U.S. Environmental Protection Agency

FEPs Features, Events and Processes

LWA Land Withdrawal Act

MSHA Mine Safety and Health Administration

NMED New Mexico Environment Department

OPC Ordinary Portland Cement

PA Performance Assessment

PABC Performance Assessment Baseline Calculation

PAVT Performance Assessment Verification Test

|           |  |
|-----------|--|
| PCS       | Panel Closure System   |
| PCS-2012  | Panel Closure System 2012 Performance Assessment                             |
| PCR       | Planned Change Request   |
| PC3R      | Panel Closure Redesign and Repository Reconfiguration Performance Assessment |
| PMR       | Permit Modification Request  |
| RCRA      | Resource Conservation and Recovery Act                                       |
| ROM       | Run-of-Mine  |
| ROMPC, or |  |
| ROMPCS    | Run-of-Mine Salt Panel Closure System  |
| SMC       | Salado Mass Concrete   |
| SNL       | Sandia National Laboratories   |
| TRU       | Transuranic  |
| TSD       | Technical Support Document   |
| VOC       | Volatile Organic Compound  |
| WIPP      | Waste Isolation Pilot Plant  |

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**I. What is the WIPP?**

The WIPP is a disposal system for defense-related transuranic (TRU) radioactive waste. Developed by the DOE, the WIPP is located near Carlsbad in southeastern New Mexico. At the WIPP, radioactive waste is disposed of 2,150 feet underground in an ancient formation of salt which will eventually “creep” and encapsulate the waste. The WIPP has a total capacity of 6.2 million cubic feet of waste.

Congress authorized the development and construction of the WIPP in 1980 “for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United

States.”<sup>1</sup> Waste which may be emplaced in the WIPP is limited to TRU radioactive waste generated by defense activities associated with nuclear weapons; no high-level waste or spent nuclear fuel from commercial power plants may be disposed of at the WIPP. TRU waste is defined as materials containing alpha-emitting radioisotopes, with half-lives greater than twenty years and atomic numbers above 92, in concentrations greater than 100 nano-curies per gram of waste.<sup>2</sup> Most TRU waste disposed at the WIPP consists of items that have become contaminated as a result of activities associated with the production of nuclear weapons (or with the clean-up of weapons production facilities), e.g., rags, equipment, tools, protective gear, soil and organic or inorganic sludges. Some TRU waste is mixed with hazardous chemicals. The waste to be disposed at the WIPP is currently located at federal facilities across the United States, including locations in California, Idaho, Illinois, New Mexico, Nevada, Ohio, South Carolina, Tennessee and Washington.

The WIPP Land Withdrawal Act (LWA), initially passed by Congress in 1992 and amended in 1996, provides the EPA authority to oversee and regulate the WIPP for compliance with EPA’s long-term radioactive waste disposal regulations. In 1996, the Agency issued the WIPP Compliance Criteria, which are found at 40 CFR part 194.<sup>3</sup> After reviewing DOE’s Compliance Certification Application (CCA), the Agency issued its certification decision on May 18, 1998, as required by Section 8 of the WIPP LWA (63 FR 27354-27406), determining

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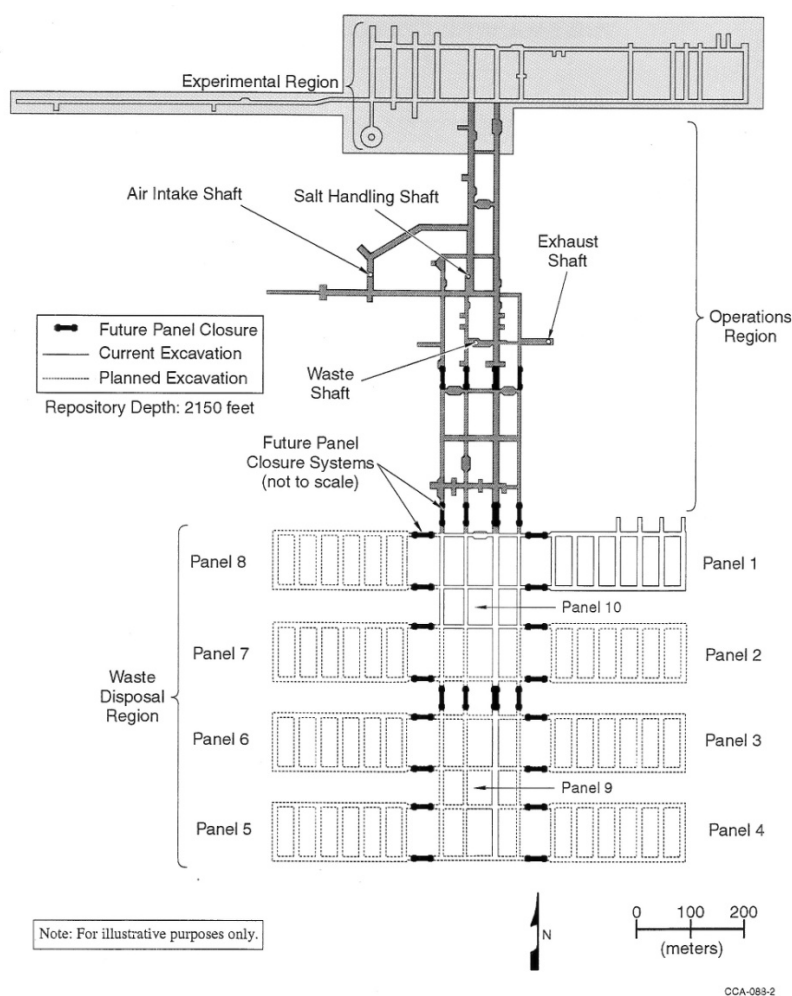
<sup>1</sup> Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980, Pub. L. 96-164, section 213.

<sup>2</sup> WIPP Land Withdrawal Act, Pub. L. 102-579, section 2(18), as amended by the 1996 WIPP LWA Amendments, Pub. L. 104-201.

<sup>3</sup> 61 FR 5224-5245 (February 9, 1996).

that the WIPP met the standards for radioactive waste disposal. The complete record and basis for the EPA's 1998 certification decision can be found in Air Docket A-93-02.

EPA's certification of WIPP's performance was based upon the repository design the Department submitted in Chapter 3 of the CCA. The underground waste disposal region at WIPP is divided into panels. A panel is a group of rooms mined into the salt, connected by tunnels called drifts. When all of the rooms of a panel are filled with waste, the DOE intends to seal the drifts with engineered structures called panel closures.



**Figure 3-2. Plan View of WIPP Underground Facility and Panel Closure Systems**

In the CCA, the Department presented four options for the design of the panel closure system, but did not specify which would be constructed at the WIPP facility. The Agency based its certification decision on the DOE's use of the most robust design, referred to in the CCA as "Option D". Condition 1, requiring DOE to Implement the Option D panel closure system, was appended to 40 CFR part 194 as part of the certification decision. (63 FR 27354, May 18, 1998) The Option D design called for the drift to be sealed using a concrete block wall and a poured concrete monolith.

The Department submitted a PCR to the EPA on September 28, 2011, proposing to alter the panel closure design. Citing experience and data gained since the CCA, the DOE's PCR states that the Option D panel closure would be extremely difficult and costly to install, and that the highly engineered design is unnecessary for either worker safety or environmental protection during the operational period. The DOE instead proposed a new panel closure design, the Run-of-Mine Salt Panel Closure System (ROMPCS), which consists of mined salt emplaced between steel bulkheads.

## **II. What did EPA Propose?**

The EPA completed a technical review of the DOE's PCR and supporting documentation. The goal of the Agency's technical review process was to determine whether, with the new design, the WIPP adequately demonstrates compliance with the requirements of 40 CFR part 194 and the release limits of 40 CFR part 191, Subparts B and C. This process is fully documented in the TSD, "Review of the DOE's Planned Change Request to Modify the WIPP Panel Closure System," (EPA-HQ-OAR-2013-0684-0002) and discussed in the notice of proposed rulemaking (78 FR 72612, Dec. 3, 2013). The Agency concluded that the WIPP will remain in compliance with its release limits with the ROMPCS design. The Agency therefore



proposed to approve the DOE's PCR to implement the redesigned panel closure at the WIPP, and to modify 40 CFR part 194 Appendix A, Condition 1 to allow panel closure designs other than Option D, as long as DOE has demonstrated WIPP's continued compliance with the long-term release standards.

**A. Approving the ROMPCS**

The EPA's Compliance Criteria at 40 CFR part 194 does not require a panel closure for the purpose of long-term compliance with release limits for radionuclides. The purpose of 40 CFR part 194 is to demonstrate compliance with the disposal regulations at 40 CFR part 191 for containment of radionuclides, which specify that long-term releases of radionuclides to the accessible environment must be unlikely to exceed specific release limits for 10,000 years after disposal, based on the amount of waste in the repository at the time of closure (§194.31).

Assessment of the likelihood that the WIPP will not exceed release limits is accomplished through a process called performance assessment, or PA. The WIPP PA process culminates in a series of computer simulations that model the physical attributes of the disposal system (e.g., site characteristics, waste forms and quantities, engineered features) in a manner that captures the behaviors and interactions among its various components. The results of the PA indicate the probability of exceeding various levels of normalized releases (§194.34). Because the Agency based its certification of the WIPP's compliance with the disposal regulations on the accurate representation of the repository in performance assessment, including a panel closure, Condition 1 was appended to 40 CFR part 194 during the certification of the WIPP. No other design feature of the repository is required by the Compliance Criteria in a similarly explicit way.

The Option D panel closure design consists of a 12-foot thick "explosion-isolation wall" constructed of solid concrete blocks filling the drift on the waste disposal side, a short section of

open drift called an “isolation zone” and a monolithic concrete barrier on the side of the open drift. Fractured rock in the immediate vicinity of the drift - called the disturbed rock zone, or DRZ - would be removed, and the resulting void space filled by the concrete monolith. In its current PCR, the DOE states that “large scale testing has demonstrated that using SMC [Salado Mass Concrete] cannot meet the design and performance requirements for the panel closures as specified in the CCA.” Even if the Option D monolith could be constructed as planned, the Agency acknowledges that it would be installed at significant cost to the Department. Additional occupational hazards would be incurred by moving and pouring large amounts of concrete in the underground and disposal operations would be significantly disrupted as well.

The DOE’s new panel closure design, the ROMPCS, consists primarily of run-of-mine (ROM) salt — impure halite that has been mined in the course of normal repository operations and not subjected to additional processing or grading. The ROMPCS design consists of two standard steel ventilation bulkheads with a minimum of 100 feet of run-of-mine (ROM) salt between them, filling the drift from floor to ceiling. In Panels 1, 2 and 5, where explosion walls have already been constructed, salt will be placed directly against the explosion wall and a standard steel ventilation bulkhead placed on the outer end of the panel closure. The DOE has stated that the ROMPCS will provide adequate protection during the operational period. Upon initial emplacement, the run-of-mine salt will exhibit the properties of a loosely consolidated or unconsolidated material. Over time, as the open areas of the repository close due to salt creep, the panel closures will consolidate and eventually heal to a state resembling intact salt.

As in the past, the Agency’s consideration of the panel closure system focused on its representation in repository performance assessment, so that the EPA can ultimately certify the WIPP’s ability to meet long-term performance standards. In support of its panel closure PCR, the

DOE initially submitted a performance assessment calculation called the Panel Closure Redesign and Repository Reconfiguration (PC3R) PA, which incorporated multiple planned changes. The Agency determined that to approve the PCR, it was necessary to isolate the impacts, if any, of the change in panel closure design. In response, the DOE prepared the PCS-2012 PA, with the explicit goal of changing only those aspects of the current baseline PA that are directly related to the change in the panel closure design. Thus, results of the PCS-2012 PA may be directly compared to results of the current Performance Assessment Baseline Calculation (PABC-09) to see the impact of changes in the panel closure on modeled releases from the facility. The EPA undertook a review of the PCS-2012 PA. The majority of the technical effort expended by the Agency was spent determining how the changes in the panel closures should be represented in the performance assessment models. The entire review process is fully documented in the Agency's TSD, "Review of DOE's Planned Change Request to Modify the WIPP Panel Closure System." (EPA-HQ-OAR-2013-0684-0002) Based on its review and on the results of performance assessment, the Agency concludes that the WIPP will continue to comply with the EPA's disposal standards with the ROMPCS. Therefore, the Agency proposed to approve the DOE's PCR and allow the implementation of the ROMPCS design at the WIPP.

## **B. Modifying Condition 1**

The Option D panel closure is currently required by 40 CFR part 194, Appendix A, Condition 1. Therefore, accepting a redesigned panel closure requires modification of Condition 1. Condition 1 was appended to 40 CFR part 194 because the DOE presented multiple panel closure options, and the EPA originally certified the WIPP's performance based on the expected properties of the Option D panel closure. It is the only engineered aspect of the repository design that is explicitly required by rule. At this time, DOE has proposed a single panel closure that it

intends to implement in all waste panels at WIPP. Furthermore, at the time of the CCA, limited performance assessment results were available to indicate the impact of the panel closure design on repository performance. Due to the evolution of the WIPP PA since the CCA, the DOE and the EPA have gained a greater understanding of panel closures' influence on PA results. Changes to the representation of the panel closure in the performance assessment models have resulted in small differences in the results, indicating that the panel closure design does not disproportionately impact the long-term performance of WIPP compared to other design features of the repository. For these reasons, the Agency does not believe that it is necessary or appropriate for the specific design of the panel closure to remain as a condition of certification. Rather, panel closures should be treated in a similar manner as any other engineered feature of the repository.

This change does not grant the DOE the ability to alter the panel closure design at will. As with any engineered component of the disposal system, the Agency must be informed of any departure from the current, approved design as required by §194.4(b)(3)(i). The EPA would expect such a request to be supported by complete technical documentation, including any updated information concerning “the geology, hydrology, hydrogeology, and geochemistry of the WIPP disposal system” and “WIPP materials of construction, standards applied to design and construction,” as required by §194.14, Content of certification applications. The Agency would use this information to determine whether or not the WIPP remains in compliance with the disposal standards. As with any other planned change, based on the potential impact to the WIPP's compliance, the EPA would determine whether the change “departs significantly from the most recent compliance application,” and must be addressed by rule in accordance with

§194.65.

### **III. How did the EPA Incorporate Public Comments in the Final Rule?**

The EPA held informal public meetings in Carlsbad, New Mexico, on December 5, 2012, and Santa Fe, New Mexico, on December 6, 2012, to provide the public with background on the DOE's panel closure system planned change request, and to give the public the opportunity to raise any technical issues that the Agency should consider in its decision. After publishing the notice of proposed rulemaking, the EPA held public meetings in Carlsbad and Albuquerque on January 22 and 23, 2014. Summaries of these meetings have been included in the docket.

In addition to comments delivered verbally, the Agency received seven sets of written comments. The majority of these comments expressed support of DOE's planned change, and of EPA's proposed approval. No comments of a technical nature were submitted, and therefore no further analysis needed to be performed in response to comments. One set of comments raised valid questions about further changes to the panel closure design. In response, EPA made a minor clarification to the rule language.

Several commenters expressed appreciation for the ability to voice their comments. The EPA feels that public participation has strengthened the WIPP regulatory program, and remains committed to involve the public in its decision process.

Many commenters stated that the ROMPCS design will meet regulatory requirements, while reducing operational costs and occupational hazards. The EPA focused on WIPP's ability to meet regulatory release standards, but has acknowledged DOE's stated operational motivations for revising the panel closure design.

Several commenters expressed confidence in the performance assessment calculations that the EPA relied on to reach its decision. Others pointed out that salt is an appropriate material

for a panel closure because salt is being relied upon to encapsulate waste in every direction except the panel closure. The Agency agrees with the use of a material that is physically and chemically compatible with the repository environment, and has relied on a body of data indicating that in time, the salt panel closure will return to a physical state similar to the halite that surrounds it.

Many commenters expressed confidence that, based upon monitoring data taken in the underground, the ROMPCS will be adequate to protect workers and the public against hydrogen, methane, and VOCs during the operational life of the repository. As stated in the Notice of Proposed Rulemaking, it is the responsibility of the New Mexico Environment Department to evaluate the ability of the ROMPCS to perform these functions, and DOE must demonstrate the adequacy of the panel closure design to the NMED through a parallel process. One commenter expressed concern that EPA's approval of DOE's PCR will unduly influence the NMED permit modification process, and suggested the Agency defer its decision. The Agency disagrees with this viewpoint. Whenever it proposes any change to the repository system, it is the responsibility of DOE to demonstrate compliance to each regulator independently. NMED must determine whether the design adequately protects against VOCs, regardless of EPA's determination of WIPP's compliance with the long-term disposal standards.

The same commenter pointed out that the proposed rule language stated that "any" change to the design must be submitted to EPA as a planned change request, and expressed concern that if the change process imposed by EPA is overly burdensome, DOE loses flexibility in meeting NMED requirements. The EPA designed the rule to allow flexibility in approaching future changes to the design. By eliminating the absolute necessity of a rulemaking, the Agency will be able to employ a graded approach when considering any future changes to the panel

closure design requested by DOE. Because it is the responsibility of the EPA to determine that the compliance model reasonably reflects the actual design of the repository, DOE must inform EPA of any change to the panel closure design described in DOE's current PCR. Depending on the scope of the changes, however, DOE may not need to provide the level of documentation typically included in a planned change request. As an example, the Agency has determined that steel ventilation bulkheads do not impact long-term performance, and need not be represented in the compliance models. It is unlikely that any additional analysis would be required to approve a change to the configuration of ventilation bulkheads, because the compliance model used to approve the design remains valid. The language of the proposed rule seemed to require a PCR for any proposed change to the panel closure design. The language of the rule modification has been altered so that DOE's obligation is to inform EPA of any proposed change. The Agency will determine the level of documentation necessary to evaluate the request.

On February 14, 2014, an incident took place in the underground at WIPP, resulting in the release of a small amount of radioactive material to the environment and a disruption of operations at the facility. EPA has been closely involved in the investigation of the incident and has determined that it does not change the basis of this panel closure decision. The incident took place in the active waste panel. Panel closures are installed only after waste emplacement in a panel is complete, and therefore would not have impacted the event. More importantly, as described above, EPA's approval of the proposed ROMPCS is based upon WIPP's compliance with the long-term disposal standards from facility closure to 10,000 years after closure. Although EPA regulations limit radiation dose to the public from facility operations, there is no indication that DOE has violated those limits, and EPA does not prescribe the technical means that DOE must use to meet those limits. Lastly, as described above, the revised condition allows

EPA to apply a graded approach when considering any further modifications to the panel closure design. It is possible that adjustments will be made to the design, as a result of either NMED's evaluation of the panel closures' ability to protect workers and the public from hazardous waste during facility operation, or as part of DOE's plan to reopen the repository. This rule change both approves a design that can be installed quickly if it is needed, and gives EPA the ability to efficiently evaluate any future changes to that design based on their impacts to long-term repository performance.

#### **IV. Administrative Requirements**

##### **A. Executive Order 12866**

Under Executive Order 12866, (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action."

##### **B. Regulatory Flexibility Act**



The Regulatory Flexibility Act (“RFA”) generally requires any federal agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless they certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and small governmental jurisdictions. This rule sets forth requirements which apply only to federal agencies. Therefore, I certify this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paper Reduction Act, 44 U.S.C. 3501 *et seq.* The Compliance Criteria in 40 CFR part 194 requirements are applicable only to the DOE and the EPA and do not establish any form of collection of information from the public.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Pursuant to Title II of the UMRA, we have determined that this regulatory action is not subject to the requirements of sections 202 and 205, because this action does not contain any “federal mandates” for state, local or tribal governments or for the private sector. This rule applies only to federal agencies.

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629; February 16, 1994), entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations,” the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income, minority and Native-American communities. We have complied with this mandate. However, the requirements specifically set forth by the Congress in the Waste Isolation Pilot Plant Land Withdrawal Act (Pub. L. 102–579), which prescribes the EPA’s role at the WIPP, did not provide authority for the Agency to examine impacts in the communities in which wastes are produced, stored and transported, and Congress did not delegate to the EPA the authority to consider the issue of alternative locations for the WIPP. During the development of the existing provisions in 40 CFR part 194, the EPA involved minority and low income populations early in the rulemaking process. In 1993, the EPA representatives met with New Mexico residents and government officials to identify the key issues that concern them, the types of information they wanted from the Agency and the best ways to communicate with different sectors of the New Mexico public. The feedback provided by this group of citizens formed the basis for the EPA’s WIPP communications and consultation plan. To help citizens (including a significant Hispanic population in Carlsbad and the nearby Mescalero Indian Reservation) stay abreast of the EPA’s WIPP-related activities, the Agency developed many informational products and services. The EPA translated several documents regarding WIPP into Spanish, including educational materials and fact sheets describing the EPA’s WIPP oversight role and the radioactive waste disposal standards. The Agency established a toll-free WIPP Information Line, recorded in both English and Spanish, providing the latest information on upcoming public meetings, publications and other WIPP-related activities. The EPA also developed a mailing list, which includes many low-income, minority and Native-American groups, to systematically provide interested parties with copies of EPA’s public information documents and other materials. Even after the final rule, in

1998, the EPA has continued to implement outreach services to all WIPP communities based on the needs determined during the certification. The Agency has established a WIPP-NEWS e-mail listserv to facilitate communications with interested stakeholders not only in New Mexico and surrounding areas, but nationally and internationally as well. The EPA's WIPP website is also continuously updated with relevant news and updates on current and future WIPP activities.

F. National Technology Transfer & Advancement Act of 1995

Section 12 of the National Technology Transfer & Advancement Act of 1995 is intended to avoid "re-inventing the wheel." It aims to reduce costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry. To comply with the Act, the EPA must consider and use "voluntary consensus standards," if available and applicable, when implementing policies and programs, unless doing so would be "inconsistent with applicable law or otherwise impractical." We have determined that this regulatory action is not subject to the requirements of National Technology Transfer & Advancement Act of 1995 as this rulemaking is not setting any technical standards.

G. Executive Order 13045: Children's Health Protection

This rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885; April 23, 1997) because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255; August 10, 1999), requires the EPA to develop an accountable process to ensure "meaningful and timely input by state

and local officials in the development of regulatory policies that have federalism implications.”

“Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action revises a specific condition of the Compliance Criteria in 40 CFR part 194. These criteria are applicable only to the DOE (operator) and the EPA (regulator) of the WIPP disposal facility. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with the Agency’s policy to promote communications between the EPA and state and local governments, the EPA specifically solicited comment on the proposed rule from state and local officials.

#### I. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249; November 9, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications, as specified in Executive Order 13175. This action revises a condition of the Compliance Criteria in 40 CFR part 194. The Compliance Criteria are applicable only to Federal agencies. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

**List of Subjects in 40 CFR Part 194**

Environmental protection, Nuclear materials, Nuclear power plants and reactors  
Radiation protection, Waste treatment and disposal.

Dated: September 30, 2014.

Janet G. McCabe, Acting Assistant Administrator,  
Office of Air and Radiation.

For the reasons set out in the preamble, 40 CFR part 194 is amended as follows:

**PART 194—CRITERIA FOR THE CERTIFICATION AND RECERTIFICATION OF THE WASTE ISOLATION PILOT PLANT’S COMPLIANCE WITH THE 40 CFR PART 191 DISPOSAL REGULATIONS**

1. The authority citation for part 194 continues to read as follows:

**Authority:** Pub. L. 102–579, 106 Stat. 4777, as amended by Public Law 104–201, 110 Stat. 2422; Reorganization Plan No.3 of 1970, 35 FR 15623, Oct. 6, 1970, 5 U.S.C. app. 1; Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011–2296 and 10101–10270.

2. Amend Appendix A to Part 194 by revising Condition 1: § 194.14(b) to read as follows:

**Appendix A to Part 194—Certification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR Part 191 Disposal Regulations and the 40 CFR Part 194 Compliance Criteria**

\* \* \* \* \*

*Condition 1: § 194.14(b), Disposal system design, panel closure system.* The Department shall close filled waste panels in a manner that has been specifically approved by the Agency. DOE must inform EPA of any modification to the approved panel closure design pursuant to §194.4(b)(3)(i), and provide any supporting information required by §194.14, *Content of compliance certification application*. The Administrator or Administrator’s authorized representative will determine whether the change differs significantly from the design included in the most recent compliance certification, and whether the planned change would require modification of the compliance criteria. The EPA’s approval of a panel closure change request requires that performance assessment calculations adequately represent the waste panel closure design, and that those calculations demonstrate the WIPP’s compliance with the release standards set by 40 CFR part 191, Subpart B in accordance with § 194.34, *Results of performance assessments*.

\* \* \* \* \*

**[FR Doc. 2014-24025 Filed 10/07/2014 at 8:45 am; Publication Date: 10/08/2014]**